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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,196	04/21/2004	Hubert T. McGovern	OMG/130/US	7726
2543	7590	07/06/2005	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			MILLER, WILLIAM L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/830,196	Applicant(s) MCGOVERN ET AL.	
	Examiner William L. Miller	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 1, 5-7 and 14 is/are rejected.
- 7) ☒ Claim(s) 2-4, 8-11 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/13/05; 03/16/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Invention I, claims 1-11 and 14-17, in the reply filed on 04-21-2005 is acknowledged. The traversal is on the ground(s) that "The Examiner has not made a showing that examining both classes would be an undue burden or that extensive additional searching would be required." This is not found persuasive as per MPEP § 803, a serious burden on the examiner may be prima facie shown via a separate status in the art for the inventions as shown by their different classifications. Therefore, the requirement is still deemed proper and is therefore made FINAL.

2. Consequently, claims 12 and 13 have been withdrawn from consideration as being drawn to a non-elected invention.

### ***Priority***

3. On page 1, line 5, of the instant specification, change "continuation" to --continuation-in-part-- as the instant application includes additional disclosure (see Figs. 9-11, and joist/base support 200) not presented in prior Application No. 09/923,288. Appropriate correction is required.

### ***Specification***

4. The abstract of the disclosure is objected to because it exceeds 150 words.

### ***Claim Objections***

5. Claims 1 and 8 are objected to because of the following informalities: claim 1, line 5, change "said" to --a--; claim 1, line 12, change "thick" to --first--; claim 8, line 2, change second

recitation of "a" to --the--; and claim 8, line 4, change "material" to --lumber member--.

Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-7, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (hereinafter APA) in view of FR 2,713,291 (hereinafter FR291).

8. Regarding claim 1, the APA, namely Fig. 6 and page 3, lines 5-23, of the instant application, discloses a screw and composite lumber assembly comprising: a composite lumber member having a top surface and an interior of composite material; and a screw comprising a head with a substantially flat top surface, and a threaded shank having an inherent pointed tip.

9. The APA fails to disclose the following: the shank having an upper portion and a lower portion, said upper portion being adjacent the head and having a first cross-section with a first diameter, said lower portion having a second cross-section with a second diameter which is less than said first diameter, and being adjacent the tip end, said upper portion and lower portion having threads, the upper portion having a greater number of threads per unit of length than the lower portion, said upper portion threads and thick cross-section being associated with a displaced material derived from the interior region of the composite lumber material, said displaced material having been displaced by said lower portion threads, and said substantially

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flat top surface of the head and the composite lumber top surface forming a substantially co-planar interface.

10. However, FR291 discloses in Figs. 5-8, a screw and lumber (or other material) assembly comprising: a lumber member A (wood or other material, page 1, lines 24-33) having a top surface and an interior of lumber material; and a screw (Fig. 5) comprising a head with a substantially flat top surface, and a shank having a pointed tip and an upper portion and a lower portion, said upper portion being adjacent the head and having a first cross-section with a first diameter, said lower portion having a second cross-section with a second diameter which is less than said first diameter, and being adjacent the tip end, said upper portion and lower portion having threads, the upper portion having a greater number of threads per unit of length than the lower portion, said upper portion threads and thick cross-section being associated with a displaced material derived from the interior region of the lumber material, said displaced material having been displaced by said lower portion threads, said substantially flat top surface of the head and the lumber member top surface forming a substantially co-planar interface (Fig. 8). The co-planar interface provides an aesthetically pleasing finished appearance.

11. Therefore, as taught by FR291, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the APA by utilizing a screw with a shank having an upper portion and a lower portion, said upper portion being adjacent the head and having a first cross-section with a first diameter, said lower portion having a second cross-section with a second diameter which is less than said first diameter, and being adjacent the tip end, said upper portion and lower portion having threads, the upper portion having a greater number of threads per unit of length than the lower portion, said upper portion threads and thick

cross-section being associated with a displaced material derived from the interior region of the composite lumber material, said displaced material having been displaced by said lower portion threads, said substantially flat top surface of the head and the composite lumber top surface forming a substantially co-planar interface. The co-planar interface would provide an aesthetically pleasing finished appearance via the substantial elimination of volcanoing and/or mushrooming of the composite lumber member.

12. Regarding claim 5, the APA discloses a recessed opening in the head for a tool (see Fig. 6 of instant application).

13. Regarding claim 6, per the broad term "about", FR291 is being viewed as teaching the threads in the upper portion have a gauge size of about #12, and a thread pitch of about  $24^{\circ}/24^{\circ}$ , said threads in the lower portion have a gauge size of about #9, and a thread pitch of about  $25^{\circ}/10^{\circ}$ .

14. Likewise, regarding claim 7, per the broad term "about", FR291 is being viewed as teaching the threads in the upper portion have a major diameter and a minor diameter wherein the minor diameter is in the range of about 0.65 to about 0.68 of the major diameter.

15. Regarding claim 14, see the above detailed analysis of the APA as modified by FR291 with respect to claims 1 and 5. Further, the APA discloses a base support B, while the FR291 screw includes an unthreaded middle portion.

***Allowable Subject Matter***

16. Claims 2-4, 8-11, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 16-17 are allowed.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WLM

William L. Miller  
Primary Examiner  
Art Unit 3677

